U.S. Department of Veterans Affairs

Veterans Health Administration
VHA FOIA Office (10DH03A)
810 Vermont Avenue NW
Washington, DC 20420

In Reply Refer To: **FOIA 25-25897-F**

June 26, 2025

[redacted]

Dear [redacted]:

This letter is the initial agency decision regarding your June 2, 2025, Freedom of Information Act (FOIA) request submitted to the Department of Veterans Affairs (VA) for the following records:

1. All communications, including but not limited to emails, memoranda, meeting minutes, reports, and contractual agreements, between the Department of Veterans Affairs (VA) and the Lewin Group concerning the development, review, or modification of Clinical Practice Guidelines (CPGs) for opioid use and pain management. This request covers the period from January 1, 2015 to Present Day.
2. All communications, including but not limited to emails, memoranda, meeting minutes, reports, and contractual agreements, between the Department of Veterans Affairs (VA) and ECRI (formerly the Emergency Care Research Institute) concerning the development, review, or modification of Clinical Practice Guidelines (CPGs) for opioid use and pain management. This request covers the period from January 1, 2015 to Present Day.
3. All communications, including but not limited to emails, memoranda, meeting minutes, reports, and contractual agreements, between the Department of Veterans Affairs (VA) and any other external contractors (aside from Lewin Group and ECRI, please specify if known, otherwise a general request for "other relevant contractors") involved in the development, review, or modification of Clinical Practice Guidelines (CPGs) for opioid use and pain management.

   This request covers the period from January 1, 2015 to Present Day.

[CLARIFIED 6/6/2025] My primary interest is in understanding the influence that external contractors, specifically The Lewin Group, had on the development and recommendations within Clinical Practice Guidelines (CPGs) for opioid/pain management.

To satisfy the need for particularity and assist the VA in locating the records, I would like to refine my request. Instead of "all communications," please prioritize the search for the following specific records:

4. Any final report(s), summary of findings, or formal recommendations that were delivered by The Lewin Group to the VA as a contractual obligation under the agreement(s) mentioned in point 1.

These two categories of records are discrete documents and should be identifiable without an expansive search of communications. This focused request should fall well within the two hours of free search time. If, after searching for these specific documents, the search time has not been exhausted, please proceed with the following limited search:

5. Official meeting minutes from any VA CPG development committee or steering group where the final report or recommendations from The Lewin Group (as described in point 2) were formally presented or approved. I am only interested in the minutes from the specific meeting(s) where this occurred.

Procedural History

The Veterans Health Administration (VHA) FOIA Office received your request on June 3, 2025. Your request was placed in the fee category of "all other." On June 10, 2025, the following portion of your request was referred to the VA Office of Acquisition and Logistics for processing and direct response to you under FOIA Tracking No. 25-26617-F:

1. **The final executed contract(s) and all associated Statement(s) of Work (SOWs)** between the Department of Veterans Affairs and The Lewin Group for any work related to the development, review, or modification of Clinical Practice Guidelines for opioid use and pain management between 2015 and 2022.

Records Search

The VHA Office of Evidence Based Practice conducted a search for documents responsive to the following portions of your request:

6. Any final report(s), summary of findings, or formal recommendations that were delivered by The Lewin Group to the VA as a contractual obligation under the agreement(s) mentioned in point 1.

7. Official meeting minutes from any VA CPG development committee or steering group where the final report or recommendations from The Lewin Group (as described in point 2) were formally presented or approved. I am only interested in the minutes from the specific meeting(s) where this occurred.

At the conclusion of the search, four documents totaling 578 pages were determined to be responsive to your request:

- VA-DOD Evidence Based CPG Opioid Therapy Follow-Up Call Summary January 30, 2017 – 76 pages
- Opioid CPG Final Evidence Report 2016 (353 pages
- Opioid Therapy CPG Face-to-Face Meeting Summary May 5, 2016 – 21 pages

- VA-DOD CPG Opioid Therapy for Chronic Pain v.3 2017 – 198 pages (VA/DoD Version 4.0 (2022) is publicly available at: https://www.healthquality.va.gov/guidelines/Pain/cot/VADoDOpioidsCPG.pdf).

According to Dr. [redacted], Director of Evidence Based Practice within the VHA Office of Quality a[redacted]afety, the Lewin Group s[redacted] CPG development contractor during the date range you provided. [redacted] conveyed the following additional remarks: "Our subject matter experts fro[redacted] VHA and DOD had sole responsibility for the development of the guideline recommendations. The SMEs used the information from our systematic evidence review and our patient focus group to develop the guideline recommendations."

Initial Agency Decision

Upon review of the responsive records, I have determined they contain information that is protected under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), and FOIA Exemption 6, 5 U.S.C. § 552(b)(6).

FOIA Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The Exemption 5 analysis is to determine which, if any, of the civil discovery privileges are applicable. I have determined the documents fall under the deliberative process privilege. The general purpose of the deliberative process privilege of Exemption 5 is to "prevent injury to the quality of agency decisions." The three policy purposes have been held to constitute the bases for this privilege are: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are actually adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. The deliberative process privilege is designed to protect the decision-making processes of a government agency. This privilege protects documents as well as the integrity of the deliberative process itself where the exposure of the process would result in harm to the decision process.

The courts have established two requirements, both of which must be met, for the deliberative process privilege to be invoked. First, the document must be pre-decisional, i.e., antecedent to the adoption of agency policy, and second, the document must be deliberative in that it makes recommendations or expresses opinions on legal or policy matters and are related to the process by which agency policy is formulated. Stated another way, the deliberative process privilege protects a document or its content when it makes recommendations or expresses opinions about legal or policy matters during a decision-making process and the document is not the decision document or incorporated into the decision document. Additionally, in accordance with the FOIA Improvement Act of 2016, an agency shall withhold information under the FOIA only if the agency reasonably foresees that disclosure

would harm an interest protected by an exemption or disclosure is prohibited by law.

Specifically, the information I am withholding under Exemption 5 consists meeting notes, minutes and summaries as they contain individiauls' thoughts, views, opinions, perceptions and/or dialog. This information is protected because it provides the basis for discussing plans and determining possible course(s) of action. Recommendations on how to best deal with a particular issue or circumstance are themselves the essence of the deliberative process. (See, e.g., Solers, Inc. v. IRS, 827 F.3d 323, 330 (4th Cir. 2016); Nat'l Wildlife Fed'n v. U.S. Forest Serv., 861 F.2d 1114, 1121 (9th Cir. 1988; Ctr. for Medicare Advocacy v. HHS, 577 F. Supp. 2d 221, 236 (D.D.C. 2008); Dorsett v. Dep't of the Treasury, 307 F. Supp. 2d 28, 37-38 (D.D.C. 2004).

FOIA Exemption 6 permits the government to withhold all information about individuals in "personnel and medical files and similar files when the disclosure of such information "would constitute a clearly unwarranted invasion of personnel privacy. Under FOIA Exemption 6, the government may withhold a document or information within a document if disclosure of the information would constitute a clearly unwarranted invasion of a living individual's personal privacy. Stated another way, information may be withheld under FOIA Exemption 6 where disclosure of the information, either by itself or in conjunction with other information available to either the public or the FOIA requester, would result in an unwarranted invasion of an individual's personal privacy without contributing *significantly* to the public's understanding of the activities of the federal government. Specifically, the information I am withholding under Exemption 6 consists of the names and email addresses of VA, Department of Defense and contract employees. Individuals associated with this information have a privacy interest in the disclosure of their personal information.

To constitute a FOIA public interest in the disclosure, the information must shed light on an agency's performance of its statutory duties. Information that does not directly reveal government operations or activities falls outside of the scope of public interest. *See* United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 773 (1989).

Stated another way, I must consider whether disclosure of the information in which there is a significant privacy interest in withholding would shed light on VA's performance of its statutory duties. While requesters are typically not required to provide the reasons for requesting information, when disclosure could result in an invasion of personal privacy, the requester bears the burden of establishing that disclosure would serve a FOIA public interest. A requester's personal interest in disclosure is irrelevant to the public interest analysis. In evaluating your asserted FOIA public interest in the disclosure of the information, I have determined there is no public interest in the disclosure of the names of meeting participants as the release would not shed light on VA's performance of its statutory duties. Therefore, I am withholding agency and contract employees' names and email addresses under FOIA Exemption 6 as notated by "(b)(6)."

The coverage of FOIA Exemption 6 is absolute unless the FOIA requester can demonstrate a countervailing public interest in the requested information by demonstrating that the individual is in a position to provide the requested information to members of the general public and the information requested contributes *significantly* to the public's understanding of the activities of the federal government. Additionally, the requester must demonstrate how the public's need to understand the information *significantly* outweighs the privacy interest of the person(s) to whom the information pertains.

Search Fees

Your request was placed in the fee category of "all other" requesters. As an "all other" requester, VA FOIA implementing regulations found at 38 CFR §1.561(c)(4) state that the requester will be charged fees for all time spent searching for responsive records, except the first two hours of search time are free, and for the cost of reproduction of the records only, excluding charges for the first 100 pages. In addition, VA will not charge the requester if the fee is $25 or less, per VA FOIA regulation 38 CFR §1.561(h)(1). Moreover, the "all other" requester will be charged the cost of searching for and reproducing the records even if there is ultimately no disclosure of records. The records search for your request was completed in less than two hours; therefore, a search fee was not assessed.

Appeal Process

If you disagree with my determination to withhold information under FOIA Exemption 5 and/or Exemption 6, you may appeal to:

Office of General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420
Email: ogcfoiaappeals@va.gov

If you should choose to file an appeal, your appeal must be postmarked or electronically submitted no later than 90 calendar days from the date of this letter. Please include a copy of this letter with your written appeal, identify the determination(s) you are appealing and clearly state why you disagree with the determination(s).

In addition to filing an appeal with the Office of General Counsel, you may also seek assistance and/or dispute resolution services regarding your FOIA request from VHA's FOIA Public Liaison and/or the Office of Government Information Services.

VHA FOIA Public Liaison
Email: vhafoia2@va.gov
Phone: (877) 461-5038

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov

Thank you for [redacted] V [redacted] additional questions, please contact me at [redacted] or [redacted].

Sincerely,

[redacted]

r

Enclosure: 4 Documents (578 pages)